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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,600	05/11/2001	Jouni Kivela	0365-0501P	5717
2292	7590	09/02/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			CHEUNG, WILLIAM K	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

S.C.

# Office Action Summary

Application No.

09/831,600

Applicant(s)

KIVELA ET AL.

Examiner

William K Cheung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 26-28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-18, 25 is/are allowed.
- 6) ☒ Claim(s) 1-13 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0511, 0830.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The examiner appreciates applicants for pointing out the typographical errors made in the group of claims for election restriction requirement. Regarding to the traversal to restriction requirement, applicants argue that the non-elected claims 26-28 are directed to an apparatus specifically designed to carry out at least one of the steps recited in the elected method claims 1-25. Further, applicants argue that claims 26-28 are consistent with example 2 in the Administrative Instructions Under the PCT, Annex B, Part 2. However, applicants must recognize that the PCT, Annex B, Part 2 recitation "Apparatus specifically designed for carrying out ..." means that the independent claim 1 and claim 26 must possess patentable features that are common to both independent claims 1 and 26. In the present case, claim 1 does not contain any specific features in claim 26 that requires the apparatus of claim 26 to operate. Therefore, claim 1 and claim 26 lack unity.

In view of the reasons set forth above, the restriction set forth is deemed proper and is therefore made Final.

2. Claims 1-28 are pending. Claims 26-28 are drawn to non-elected claims. Claims 1-25 are examined with merit.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-13, 19-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 (line 9), the recitation "withdraw and separately recovering particle agglomerates from the reactor" is considered indefinite. The examiner understands that particles are withdrawn from the reactor. However, how can the particle agglomerates be recovered separately from the reactor when the particle agglomerates are already outside of the reactor?

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernier et al. (US 5,834,571).

*The invention of claim 1 relates to a **method of producing a polymer in a continuously operated gas phase reactor**, comprising*

- ***polymerizing at least one monomer in a bed containing active catalyst formed by catalyst and polymer particles suspended in a fluid, said bed defining a fluidized bed level in said reactor,***
- ***continuously withdrawing polymer powder from the reactor,***
- ***adjusting the discharge rate of the polymer powder so as to maintain a constant bed level during polymerization; and***
- ***withdrawing and separately recovering particle agglomerates from the reactor.***

### **Allowances**

7. Claims 14-18, 25 are allowed.
8. The following is an examiner's statement of reasons for allowance:  
  
As of the date of this office action, the examiner has not located or identified any reference that can be used singularly or in combination with another reference including the closest prior art of Bernier et al. (US 5,834,571) to render the present invention anticipated or obvious to one of ordinary skill in the art.

*The invention of claims 14-18, 25 relates to a **method of discharging polymer from a continuously operated gas phase reactor**, wherein at least one **monomer is polymerized in a bed containing active catalyst** form by catalyst and polymer particles suspended in a fluid, said bed defining a **fluidized bed level in said reactor**, comprising*

- ***continuously withdrawing polymer powder** from the reactor;*
- ***feeding the withdrawn polymer powder into a collecting vessel,***  
*wherein lumps are separated from finely-divided polymer powder and at least a part of the gas is separated from the solid materials;*

- ***recovering the lumps, and***
- ***adjusting the discharge rate of the polymer powder so as to maintain a constant bed level during polymerization.***

Bernier et al. (col. 19, line 10-13) disclose methods for producing a polymer in a continuously operated gas phase reactor where the polymer powder is withdrawn continuously from the reactor at such a rate that the fluidized bed is maintained at a constant level. Bernier et al. are silent on withdrawing particle agglomerates from the reactor and a separate recovery the agglomerates from the reactor. Therefore, it would not be apparent to one of ordinary skill in art to use the method teachings of Bernier et al. to obtain the invention of claims 14-18, 25. The invention of claims 14-18, 25 is allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William K. Cheung

Primary Examiner

August 27, 2004

**WILLIAM K. CHEUNG  
PRIMARY EXAMINER**